

REMARKS

In response to the Office Action dated April 20, 2006, Applicant respectfully requests reconsideration.

Claims 1-4 and 8-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,415,182 (Chin). As discussed below, the claims are patentable over Chin.

Claim 1 is directed to an instrument for removing a tissue sample from a subject. The instrument includes a housing, said housing comprising a plurality of tissue sampling devices, each of said devices comprising an isolated chamber. Each of the devices is controllable to open the isolated chamber for receipt of a tissue sample. The plurality of tissue sampling devices is positioned in an array along the length of the instrument.

Chin discloses a biopsy needle configured to take multiple samples via the plurality of needles disposed at the end of the instrument. The diameter of the biopsy needle is large such that a plurality of needles can be deployed at the distal end of the instrument.

Chin fails to teach or suggest an instrument having a plurality of tissue sampling devices positioned in an array along the length of the instrument, as recited in claim 1. For at least these reasons, claim 1 is patentable over Chin. Claims 2-4 and 8-10 depend, directly or indirectly, from claim 1 and are patentable for at least the reasons that claim 1 is patentable.

Claim 20 stands rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,295,990 (Levin). As discussed below, claim 20 is patentable over Levin.

Claim 20 is directed to a method of extracting multiple tissue samples from a subject. The method includes inserting the instrument of claim 1 into the subject, heating the plurality of sampling devices, heating causing actuation of a mechanical portion of the plurality of sampling devices, such that a mechanical portion of the sampling devices collects a sample and retains the sample, depositing the sample into a local chamber, and removing the instrument from the subject.

Levin is directed to a device for the removal of tissue. The device includes jaws at the end of a rod to collect the tissue sample. Cutting edges positioned on the recess of the jaws remove a tissue sample and the tissue sample is collected in the recesses of the jaws.

Levin does not teach or suggest inserting an instrument having an array of tissue sampling devices positioned along its length into a subject, as is recited in claim 20. Rather, Levin includes cutting edges and a jaw positioned at a distal end of the device. Thus, for at least these reasons, claim 20 is patentable over Levin.

Claims 5-6 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chin in view of U.S. Patent Publication No. 2002/0193705 (Burbank). Burbank discloses a tissue sampling device having an inner cannula and an outer cannula. The sampling device in Burbank can operate using a radio frequency energy generator. Burbank, however, fails to overcome the deficiencies of Chin, discussed above with respect to claim 1. Claims 5-6 and 12 depend, directly or indirectly, from claim 1, and are patentable for at least the reasons claim 1 is patentable.

Claim 7 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Chin in view of Levin. Claim 7 depends indirectly from claim 1. As discussed above, claim 1 is patentable over Chin. Levin, also discussed above, fails to overcome the deficiencies of Chin. Thus, claim 7 is patentable for at least the reasons that claim 1 is patentable.

Claim 16 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Chin in view of U.S. Patent No. 4,305,406 (Megahed). Claim 16 has been amended to depend directly from claim 1. Megahed discloses a needle assembly having a chamber that is in fluid communication with the housing of the needle. The chamber collects and stores blood from a patient. Megahed, however, fails to overcome the deficiencies of Chin discussed above with respect to claim 1. Thus, claim 16 is patentable for at least the reasons that claim 1 is patentable.

Claims 17-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chin in view of Burbank, and further in view of Levin. As discussed below, the claims are patentable over the cited references.

Claim 17 is directed to a method of extracting multiple tissue samples from a subject. The method includes inserting into the subject an instrument comprising a plurality of controllable tissue sampling devices arranged in an array along a longitudinal axis of a housing, each of said sampling devices comprising an isolated chamber, contacting a sampling device with deployment signal, said signal being selected from the group consisting of an electrical, optical, pneumatic, hydraulic, RF- transmitted, inductive, magnetic, thermal or sonic signal, said signal causing an opening of said chamber, removing a tissue sample from an anatomical location adjacent to said chamber, and sealing said chamber.

As discussed above with respect to claims 1 and 20, none of Chin, Levin and Burbank teaches or discloses inserting into the subject an instrument comprising a plurality of controllable tissue sampling devices arranged in an array along a longitudinal axis of a housing, as is recited in claim 17. For at least these reasons, claim 17 is patentable over the cited references.

Claims 22-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Levin in view of Burbank. Burbank discloses a tissue sampling device having an inner cannula and an outer cannula. Burbank, however, fails to overcome the deficiencies of Levin, discussed above with respect to claim 20. Claims 22 and 23 depend directly from claim 20, and are patentable for at least the reasons claim 20 is patentable.

Claim 26 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Levin in view of U.S. Patent No. 5,531,756 (Larose). Larose discloses a surgical punch for cutting body tissue to prevent the clogging of cannulas during a procedure. However, Larose fails to overcome the deficiencies of Levin, discussed above with respect to claim 20. Claim 26 depends directly from claim 20 and is patentable for at least the reasons that claim 20 is patentable.

CONCLUSION

Applicant believes these claims are in condition for allowance, which action is respectfully requested. Applicant reserves the right to prosecute claims which are equal to or broader in scope in this or future applications related to the above-identified patent application.

Should the Examiner have any questions concerning the enclosure submitted herewith, the Examiner is invited to telephone the undersigned agent of record at the number provided.

The Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311 (Reference No. 26859-002).

Respectfully submitted,



Ingrid A. Beattie, Reg. No. 42,306
Alison McCarthy, Reg. No. 51,998
Attorney(s) for Applicant
c/o MINTZ, LEVIN
Address all written correspondence to
Customer no.: 30623
Tel: (617) 542-6000
Fax: (617) 542-2241

Date: October 19, 2006